Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Numbering Resource Optimization	)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF YOURTEL AMERICA, INC. IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING

YourTel America, Inc. ("YourTel"), through its undersigned counsel, is grateful to the Commission for the opportunity to submit comments on the Commission's three recent proposals to significantly reform intercarrier compensation and universal service support mechanisms.

As the Commission correctly observes in each of its three draft proposals, "Lifeline customers are, by definition, among the poorest individuals in the country" and "[t]he Lifeline program provides an opportunity for the Commission to ensure that low-income families are not denied access to telephone service."[1] For more than twelve (12) years, even before its participation in the Lifeline program, YourTel

[1] App. B ("Narrow Universal Service Reform Proposal") at para. 90; App. C ("Alternative Proposal") at para. 137.

has provided local and long distance telephone service and other communications services to low income consumers in underserved markets in Kansas, Missouri and Oklahoma.[2] YourTel has been designated an Eligible Telecommunications Carrier by state public utility commissions in Kansas, Missouri and Oklahoma and has been an active participant in the USF low income Lifeline and Link-Up programs since 2003. The vast majority of YourTel's customers are Lifeline eligible, 95% of whom did not have telephone service prior to obtaining it from YourTel.

Among its proposed reforms, the Commission proposes to take certain measures to address the needs of Lifeline consumers. First, all three proposals adopt an exemption to the numbers-based contribution methodology so that Lifeline customers are excluded from the universal service contribution base.[3] YourTel supports this new exemption for Lifeline customers.

Second, the Chairman's Draft Proposal (App. A) and the Alternative Proposal (App. C), though not the Narrow Universal Service Reform Proposal (App. B), establish a broadband Lifeline and Link Up Pilot Program for which all ETCs are eligible to participate who serve consumers eligible for Lifeline or Link Up program support.[4] YourTel appreciates that the Commission has responded positively to its request that qualifying low income customers in other states, such as Missouri, or any other state, would be eligible to participate, on a "first come, first served basis."[5]

While helpful, these measures fail to address the necessary replacement fund mechanism that YourTel has urged the Commission to establish to replace the lost intercarrier compensation revenues which support the telecommunications services that YourTel offers to low-income consumers.[6]

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[2] YourTel Oct. 21, 2008 *ex parte* letter ("YourTel *ex parte*") at 1.
[3] App. B ("Narrow Universal Service Reform Proposal") at para. 89; App. C ("Alternative Proposal") at para. 136.
[4] App. A at para. 85; App. C. at para. 81.
[5] *Id.* & n.205 citing YourTel *ex parte* at 2 (urging the Commission to allow low-income consumers in Missouri to be eligible for Pilot Program support).
[6] YourTel *ex parte* at 1-2.

I. THE COMMISSION MUST ENSURE THAT LIFELINE PROVIDERS RECEIVE INCREASED SLC RECOVERY AS TIER 1 SUPPORT TO OFFSET LOST INTERCARRIER COMPENSATION REVENUES.

Although exempting Lifeline consumers from the USF contribution base and establishing a broadband Lifeline Pilot Program should benefit Lifeline consumers, the Commission needs to do more "to ensure that low-income families are not denied access to telephone service" if the Commission moves forward with its bold intercarrier compensation reforms. None of the present proposals adequately considers the impact that intercarrier compensation reform --and particularly access charge reform-- will have on Lifeline ETCs like YourTel which are dependent upon underlying service obtained from an incumbent local exchange carrier for sale to underserved low income customers. Under existing Commission rules[7], YourTel's Subscriber Line Charge recovery is capped at the tariffed SLC of the price cap incumbent local exchange carrier (incumbent LEC) serving the same geographic area (though typically not YourTel's low income customers).[8] Pursuant to the Commission's CALLS Order, the tariffed primary enduser common line charge of the incumbent LEC subject to price cap regulation is calculated under Commission Rule 69.152(d)(1) as the lesser of the price cap revenue requirement per study area, as determined under Section 61.3(d), or $6.50 per line. Thus, YourTel's ability to recover lost intercarrier compensation under either of the two proposals would be unfairly and artificially limited by the SLC cost recovery of the corresponding incumbent LEC serving the geographic area. However, there is absolutely no correlation between the price cap incumbent LEC's regulated rates and cost recovery, and YourTel's "market based" rates and cost structure. In the context of major intercarrier compensation reform, there is no justification for maintaining an arbitrary limit to YourTel's Tier 1 support SLC recovery by artificially linking it to the calculation of the incumbent LEC's price cap cost recovery. YourTel's operating costs and revenue streams, and even the regulation of its rates and ETC support, are completely different from those of the incumbent LEC. It makes no rational economic sense, and would

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[7] *See*, 47 C.F.R. 54.403(a)(1), which establishes federal Lifeline support for all ETCs in Tier One as the "tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with §69.104 or §§69.152(d)(1) and 69.152(q) of this chapter, whichever is applicable…." (cited at App. A n.778 & App. C n.769)

be poor regulatory policy, to continue to limit YourTel's Tier 1 SLC recovery without providing for meaningful additional replacement revenue for the reductions to YourTel's intercarrier compensation revenue. The Commission's praiseworthy commitment to ensuring that low income families continue to have access to telephone service requires that this gap in lost intercarrier compensation revenue for Lifeline ETCs be addressed in any intercarrier compensation reform proposal that the Commission adopts.

To illustrate, for a price cap local exchange carrier like AT&T Missouri, the maximum monthly charge for a primary residential end user common line charge currently allowed under Commission rules "*shall be the lesser of: (i) The Average Price Cap CMT Revenue per Line month...or $6.50.*"[9] Since 2003, AT&T's SLC in the Kansas City, Missouri MSA has been consistently less than $6.50, and is currently at the Average Price Cap CMT Revenue per Line month of $5.31. While such capped SLC support might be adequate for a Lifeline provider when supplemented by existing intercarrier compensation revenue sources, if those intercarrier compensation revenues are lost or reduced, YourTel must recover those lost revenues elsewhere. The Commission's proposals provide for substantial incumbent LEC SLC cap increases for "enduser recovery in light of lost intercarrier compensation revenues."[10] Like any other non-incumbent LEC, YourTel must also offset lost intercarrier compensation revenues from other sources. Both the Chairman's Draft Proposal and the Alternative Proposal provide that "[w]e allow those carriers [non-incumbent LECs] to recover any net loss in intercarrier compensation revenues in any lawful manner.[11]" But this passing reference to non-incumbent LEC cost recovery glosses over the plain fact that YourTel cannot replace lost intercarrier compensation revenue by recovering it from its low income consumers without impairing access to telephone service. The difference in lost intercarrier compensation revenue must be offset by additional Tier 1 support, by adjusting the SLC cap to the maximum new SLC caps provided in the proposals, along with any

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[8] YourTel *ex parte* at 1-2;
[9] 47 C.F.R. § 69.152(d)(1). (Emphasis added).
[10] App. A, para. 298 & App. C, para. 293.
[11] App. A, para. 301 & App. C, para. 297.

appropriate additional SLC or other rate increases proposed by the Separations Joint Board or other reforms that may ultimately be approved by the Commission. Accordingly, to avoid undue harm to Lifeline providers, and indirect harm to the low income customers that they serve, the Commission must now provide for an uncoupling of competitive ETCs' SLC from the arbitrary ceiling of the incumbent LEC Average Price Cap CMT Revenue per Line month (i.e. AT&T Missouri's current $5.31 per month), enabling Lifeline providers to receive Tier 1 support at whatever maximum SLC cap is established for incumbent LECs by the Commission. This is the only competitively neutral way to ensure that Lifeline ETCs, whose SLC recovery is regulated as Tier 1 support rather than paid by low income customers, will be adequately compensated for lost intercarrier compensation revenues, and Lifeline consumers will not suffer the adverse effects of removal of intercarrier compensation revenue support from their non-incumbent Lifeline providers.[12] Lifeline ETCs, unlike other non-incumbent LECs who do not serve low income customers, cannot offset lost intercarrier compensation revenue by simply raising rates on low income customers. Absent such a revenue replacement mechanism, the proposals would unfairly punish Lifeline ETCs serving low income consumers by taking away important intercarrier compensation revenue sources without offering any offsetting dollar neutral recovery for that lost revenue.[13]

II. THE COMMISSION SHOULD DELAY IMPLEMENTATION OF ORIGINATING ACCESS REFORMS TO EASE THE TRANSITION FOR LIFELINE PROVIDERS, SUCH AS YOURTEL, WHICH CANNOT SIMPLY OFFSET REVENUE LOSSES WITH NEAR-TERM RATE INCREASES ON ITS LOW INCOME CUSTOMERS.

The Commission also requests comment on the appropriate transition for eliminating originating access charges.[14] The Commission has found that originating access charges must be eliminated at the conclusion of the proposed ten (10) year transition period. However it has also recognized the importance of a "measured transition" rather than a "flash cut" to a new intercarrier compensation regime.[15] This is

[12] Unlike other non-incumbent LECs, competitive Lifeline service providers <u>are</u> subject to regulation by the Commission. They are limited under existing Commission regulations as to what they can recover in Tier 1 support, for Lifeline services.
[13] *See,* App. A at para. 298 & n.778 (citing 47 C.F.R. § 54.403); App. C at para. 293 & n.769 (citing 47 C.F.R. § 54.403).
[14] *See,* App. A at para. 229; App. C at para. 224.
[15] *See,* App. A at para. 230; App. C at para. 225.

because, as the Commission recognizes, the adverse revenue effects of this comprehensive intercarrier compensation reform proposal will signify the "elimination of implicit universal service subsidies in those rates.[16]" Thus, the Commission has stated that the public interest "goal of this transition is to allow gradual changes to consumer rates while providing carriers with sufficient means to preserve their financial integrity as we move to the new intercarrier compensation regime."[17]

In YourTel's case, as a small Lifeline service provider, the elimination of implicit universal service subsidies from lost access revenue, particularly originating access revenue, has a significant negative financial impact. YourTel does not have the luxury of increasing end-user rates charged to low income consumers to offset lost intercarrier compensation revenue. Therefore, the assumption in any transition plan that lost intercarrier compensation revenue will be overcome, in time, by increases in consumer rates, simply does not hold for Lifeline providers. To remedy this revenue shortfall uniquely felt by Lifeline ETCs serving low-income customers (whom the Commission recognizes should be exempted from the universal service contribution base as the consumers "most in need of those [universal service] benefits[18]"), the Commission should provide for the following transition plan for Lifeline providers, including: (a) that Lifeline providers, because of their unique role in serving low income consumers who most need universal service, may continue to recover originating access at existing rates during the entire ten year transition period; and (b) to offset additional lost intercarrier compensation revenue, as discussed above, Lifeline providers should receive increased Tier 1 SLC support of $8.00 per primary residential line (and $8.50 for non-primary residential line), and whatever maximum SLC cap or other support for lost intercarrier compensation that the Commission should adopt after consideration of the Separations Joint Board recommendations, irrespective of the amount of the SLC that the corresponding price cap regulated incumbent LEC charges its enduser customer.

Elimination of originating access will have the greatest impact on Lifeline providers who choose

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[16] *See,* App. A at para. 231; App. C at para. 226.
[17] *See,* App. A at para. 233; App. C at para. 228.
[18] App. B ("Narrow Universal Service Reform Proposal") at para. 89; App. C ("Alternative Proposal") at

to focus on the needs of low-income consumers, such as YourTel, because of their reduced ability to offset this lost access revenue with higher rates charged to those same low income customers. Accordingly, a more extended transition plan for the implementation of an elimination of originating access is warranted for Lifeline providers because the elimination of implicit universal service support in originating access rates will be most acutely felt by Lifeline providers and must be prolonged to allow them to develop alternative revenue sources to avoid impairing universal service.

More advanced and intermodal telecommunications services have been deployed during the tenure of the current Commission. Yet even today, not all Americans can afford to participate in the digital revolution, making the promise of universal service still illusory for many of our citizens. YourTel requests that the Commission continue to be mindful of how its policies can harm low income consumers, and particularly ensure that any intercarrier compensation reform be dollar neutral to Lifeline providers and their customers..

Respectfully submitted,

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para. 136.